

**TRANSCRIPT  
OF  
RECORD**

(25,373)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1916.

No. 543.

NORTHERN PACIFIC RAILWAY COMPANY, PLAINTIFF  
IN ERROR,

vs.

M. J. SOLUM.

IN ERROR TO THE SUPREME COURT OF THE STATE OF  
MINNESOTA.

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## 1 STATE OF MINNESOTA:

In the Supreme Court, October Term, 1915.

## STATE OF MINNESOTA,

*County of Ramsey, ss:*

District Court, Second Judicial District.

M. J. SOLUM, Plaintiff,

vs.

NORTHERN PACIFIC RAILWAY COMPANY, Defendant.

*Summons.*

The State of Minnesota to the above named Defendant:

You are hereby summoned and required to answer the complaint of the plaintiff in the above entitled action, a copy of which said complaint is hereto attached and herewith served upon you, and to serve a copy of your answer thereto, upon the subscribers hereof, at their office, in the Capitol at the City of St. Paul, Ramsey

2 County, Minnesota, within twenty (20) days after the service of this summons upon you, exclusive of the day of such service, and if you fail to answer as aforesaid, within the time aforesaid, the plaintiff in the above entitled action will take judgment against you for the sum of Two Hundred Twenty-four and 89/100 Dollars (\$224.89), with interest at the rate of six per cent per annum on \$14.40 from October 21st, 1909, on \$17.42 from August 23rd, 1910, and \$16.45 from September 24th, 1910, on \$17.93 from December 20th, 1910, on \$14.47 from January 14th, 1911, on \$16.49 from January 14th, 1911, on \$14.98 from January 19th, 1911, on \$15.12 from September 29th, 1911, on \$15.19 from March 11th, 1911, on \$15.12 from March 2nd, 1911, on \$15.84 from October 18th, 1911, on \$18.72 from December 27th, 1911, on \$15.98 from January 22nd, 1912, on \$16.78 from February 1st, 1912; together with the costs and disbursements of this action.

Dated at St. Paul, Minnesota, this 21st day of April, 1915.

LYNDON A. SMITH,

*Attorney General.*

## 3 STATE OF MINNESOTA,

*County of Ramsey:*

District Court, Second Judicial District.

M. J. SOLUM, Plaintiff,

vs.

NORTHERN PACIFIC RAILWAY COMPANY, Defendant.

*Complaint.*

The plaintiff for his complaint against the defendant in the above entitled action alleges:

## 1.

That during all the times herein mentioned, the defendant was and still is a corporation created, organized and existing under and by virtue of the laws of the State of Wisconsin and was and still is a common carrier engaged in the business of carrying freight for compensation between stations in the State of Minnesota and more particularly between the stations hereinafter mentioned.

## 2.

That, at the times hereinafter mentioned, the defendant owned, operated and used a line of railroad lying wholly within the State of Minnesota, from Duluth to Hitterdal, via Carlton, having a total length of 228.1 miles, the distance from Duluth to Carlton on said line being 20.9 miles; that the defendant also owned, operated and used another line of railroad between Duluth and Carlton having a length of 27.5 miles, 11.7 miles of which were in the State of Wisconsin and 15.8 miles of which were in the State of Minnesota, the total distance between Duluth and Hitterdal over the latter route being 234.7 miles.

## 3.

That on or about the 12th day of September, 1900, the defendant company entered into a written contract with the State of Minnesota, a copy of which is marked Exhibit "B," attached hereto and  $3\frac{1}{2}$  made a part hereof, wherein and whereby the defendant company bound and obligated itself to forever thereafter operate and maintain a line of railroad, wholly within the State of Minnesota, and extending from the navigable waters of Lake Superior to the main line of defendant's railroad, which main line extends from Ashland, Wisconsin, to Puget Sound and the Columbia River; that the said line of railroad between the stations of Duluth and Carlton, lying wholly within the State of Minnesota, is the only line of railroad owned and operated by the defendant company, so extending from the navigable waters of Lake Superior to its said main line.

## 4.

That the Legislature of the State of Minnesota duly enacted a law known as Chapter 232, General Laws of Minnesota for 1907, wherein reasonable maximum rates to be charged by all railroad companies doing business in said State, for the transportation, in carload lots, of certain commodities, including soft coal, between stations in said State, were established and the said railroad companies were therein prohibited from charging or receiving therefor any greater sum than the rates therein established.

## 5.

That under and pursuant to said Chapter 232, the defendant was prohibited from charging or receiving for the transportation of soft

4 coal, in carload lots between stations in the State of Minnesota, a greater rate of compensation than \$1.28 for a distance of 228.1 miles, or \$1.31 for a distance of 234.7 miles.

6.

That between the 18th day of October, 1909, and the 30th day of January, 1912, the Pittsburg Coal Company and the Zenith Furnace Company delivered 14 carloads of soft coal, in carload lots, to the defendant, at Duluth, Minnesota, to be transported over its said railroad to Hitterdal, Minnesota, and there delivered to the plaintiff herein; that the defendant accepted said shipments and it thereupon became its duty to transport the same over its line of railroad, lying wholly within the State of Minnesota and also over its line of railroad upon which the lowest freight rate prevailed.

7.

That notwithstanding its said duty and the provisions of said Chapter 232, the defendant transported said soft coal over its said line of railroad lying partly in the State of Wisconsin and charged, took and received from the plaintiff, as compensation therefor, the sum of \$2.00 per ton, amounting in the aggregate to \$624.70, instead of transporting said soft coal over its said line of railroad lying wholly in the State of Minnesota, which would have entitled the defendant to have charged and received from the plaintiff the sum of \$1.28 per ton, amounting to the sum of \$399.82 for all of said shipments; that by reason thereof, the plaintiff was injured and  
5 damaged in the sum of \$224.89, with interest on such excess sums from the date of the payments thereof.

8.

That the facts relating to each of said shipments are shown in an exhibit which is attached hereto, made a part hereof and marked Exhibit "A," which consists of eleven columns; the first column containing the name of the consignor; the second column containing the name of the consignee; the third column containing the name of the place from which the shipments were made; the fourth column containing the names of the places to which the shipments were made; the fifth column containing the time when the shipments were made; the sixth column containing a description of the freight shipped; the seventh column containing the weight of the freight shipped; the eighth column containing the amount of money actually paid to the defendant for the shipments; the ninth column containing the amount of money that should have been paid; the tenth column containing the amount of the overcharges which should be refunded to the plaintiff; and the eleventh column containing the dates of said payments.

Wherefore, plaintiff demands judgment against the defendant for the sum of Two Hundred Twenty-four and 89/100 Dollars with interest on \$14.40 from October 21st, 1909, on \$17.42 from August

6        23rd, 1910, on \$16.45 from September 24th, 1910, on \$17.93  
       from December 20th, 1910, on \$14.47 from January 14th,  
       1911, on \$16.49 from January 14th, 1911, on \$14.98 from  
       January 19th, 1911, on \$15.12 from September 29th, 1911, on  
       \$15.19 from March 11th, 1911, on \$15.12 from March 2nd, 1911,  
       on \$15.84 from October 18th, 1911, on \$18.72 from December 27th,  
       1911, on \$15.98 from January 22nd, 1912, on \$16.78 from February  
       1st, 1912, together with the costs and disbursements of this  
       action.

Dated at St. Paul, Minnesota, this 21st day of April, 1915.

LYNDON A. SMITH,

*Attorney General.*

HENRY C. FLANNERY,

*Of Counsel.*

7-14 STATE OF MINNESOTA,

*County of Ramsey, ss:*

Lyndon A. Smith being duly sworn, deposes and says that he is the duly elected, qualified and acting Attorney General of the State of Minnesota; that he has read the foregoing complaint and knows the contents thereof and that the same is true of his own knowledge, except as to those matters therein stated on information and belief and that as to such matters he believes it to be true.

LYNDON A. SMITH.

Subscribed and sworn to before me this 21 day of April 1915.

[SEAL.]

D. G. STRUTZEL,

*Notary Public, Ramsey County, Minnesota.*

My commission expires June 1, 1916.

Ramsey County, Minn.

\*     \*     \*     \*     \*     \*     \*

15      STATE OF MINNESOTA,

*County of Ramsey, ss:*

District Court, Second Judicial District.

M. J. SOLUM, Plaintiff,

vs.

NORTHERN PACIFIC RAILWAY COMPANY, Defendant.

*Answer.*

I.

The Northern Pacific Railway Company, for answer to the complaint, admits the averments of paragraphs 1, 2, 4 and 5 thereof. It admits the making of the contract, Exhibit "B", and that it received at Duluth and carried to Hitterdal, Minnesota, the fourteen carloads of soft coal referred to in paragraph 6 and in Exhibit "A" of the

complaint and that it transported the same over its line of railroad lying partly in the State of Wisconsin, and that it charged for the carriage thereof the rate and the aggregate amount shown in paragraph 7 of the complaint. Otherwise it denies the averments of the complaint.

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## II.

Further answering and for a separate defense to the complaint, this defendant alleges that between Duluth, Minnesota, and Hitterdal, Minnesota, it owned during all the time mentioned in the complaint and still owns two lines of railway, one lying wholly within the State of Minnesota and the other extending from Duluth, Minnesota, through Wisconsin, to Hitterdal, Minnesota. The distance between said points via the intrastate line was 228.1 miles, and via the interstate line was 234.7 miles. The grades of said two lines, however, were such that in the ordinary and proper and economical operation of its property, it was necessary to move, and this defendant in general did and does now, move all out-bound shipments from Duluth via the interstate line and all in-bound shipments into Duluth via the intrastate line, and that to have carried the shipments referred to in the complaint to their destination at Hitterdal via said intrastate line instead of via the interstate line, over which they were actually carried, would have entailed great additional expense upon this defendant.

## III.

Defendant further alleges that before the carriage by this defendant of any of the shipments referred to in the complaint a suit in equity was commenced in the Circuit Court of the United States, District of Minnesota, Third Division, wherein Charles E. Perkins and David C. Shepard were plaintiffs and this defendant,

17 Northern Pacific Railway Company, and certain individuals were defendants, in which suit the complainants asked that this defendant be enjoined from publishing or making effective the rates prescribed by said Chapter 232 of the Laws of Minnesota for the year 1907, and that during the whole of the period referred to in said complaint this defendant was, by the order of said Circuit Court of the United States for the District of Minnesota, enjoined and restrained from publishing or making effective the rates prescribed in said chapter 232 and that said order so enjoining and restraining this defendant was not dissolved until July, 1913, when it was dissolved pursuant to the mandate of the Supreme Court of the United States reversing said order of said Circuit Court of the United States for the District of Minnesota. Defendant alleges that during all of the time mentioned in the complaint, the rates actually published and collected by defendant for the carriage of coal from Duluth, Minnesota, to Hitterdal, Minnesota, were the same via the intrastate line as via the interstate line of this defendant.

## IV.

Defendant further alleges that the rates actually charged by it and collected from plaintiff for the carriage of shipments referred to in the complaint via its interstate line were just and reasonable rates for the service so performed by defendant; that all of said rates were duly collected pursuant to tariffs duly published and filed  
 18 with the Interstate Commerce Commission, and were the legal rates for the service so rendered.

Wherefore, Having fully answered, defendant prays judgment for its costs.

C. W. BUNN AND  
 CHARLES DONNELLY,  
*Attorneys for Defendant.*

19 State of Minnesota, County of Ramsey. District Court, Second Judicial District. M. J. Solum, Plaintiff, vs. Northern Pacific Railway Co., Defendant. Answer. C. W. Bunn and Charles Donnelly, Attorneys for Defendant, St. Paul, Minnesota. Due service of this instrument and receipt of copy thereof admitted at — this 14 day of May 1915. Lyndon A. Smith, Attorney for Plaintiff. Filed May 25, 1915. Matt Jensen, Clerk. By G. P. Ritt, Deputy.

20 STATE OF MINNESOTA,  
*County of Ramsey, ss:*

District Court, Second Judicial District.

M. J. SOLUM, Plaintiff,  
 vs.  
 NORTHERN PACIFIC RAILWAY COMPANY, Defendant.

*Demurrer.*

The plaintiff demurs to the answer herein on the ground that it does not state facts sufficient to constitute a defense.

LYNDON A. SMITH,  
*Attorney General of the State of Minnesota,*  
*Attorney for Plaintiff.*  
 HENRY C. FLANNERY,  
*Of Counsel.*

21 State of Minnesota, County of Ramsey. District Court, Second Judicial District. M. J. Solum, Plaintiff, vs. Northern Pacific Railway Co., Defendant. Demurrer. Due service of this instrument and receipt of copy thereof admitted at St. Paul, Minnesota, this 18th day of May 1915. C. W. Bunn and Charles Donnelly, Attorneys for defendant. Lyndon A. Smith, Attorney General, State of Minnesota, Attorney for Plaintiff. Filed May 26, 1915. Matt Jensen, Clerk. By G. P. Ritt, Deputy.

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STATE OF MINNESOTA,  
*County of Ramsey, ss:*

District Court, Second Judicial District.

M. J. SOLUM, Plaintiff,

vs.

NORTHERN PACIFIC RAILWAY COMPANY, Defendant.

*Order.*

The above entitled matter came duly on to be heard by the Court on May 29, 1915, Messrs. Lyndon A. Smith and Henry C. Flannery appearing for plaintiff and Messrs. C. W. Bunn and Charles 23 Donnelly appearing as counsel for defendant. Said matter came on to be heard upon the demurrer of plaintiff as set forth in the files herein. Upon the files herein and the arguments and briefs submitted by counsel and being advised in the premises, it is

Ordered that plaintiff's demurrer to the answer be sustained and that the plaintiff have judgment thereon, but with leave to the defendant to amend the answer within twenty days from the filing hereof.

HUGO O. HANFT,  
*District Judge.*

Dated September 30, 1915.

Stay 20 days from filing hereof.

HANFT, J.

Endorsed: Filed Oct. 2, 1915. N. C. Robinson, ——, By G. P. Ritt, Deputy.

24 STATE OF MINNESOTA,  
*County of Ramsey, ss:*

District Court, Second Judicial District.

M. J. SOLUM, Plaintiff,

vs.

NORTHERN PACIFIC RAILWAY COMPANY, Defendant.

*Judgment.*

Pursuant to the Order for judgment duly made and filed in the above entitled action on the 2nd day of October, A. D. 1915.

Now, on motion of Lyndon A. Smith, Attorney General, said Attorney, it is hereby adjudged that the plaintiff herein recover of said

25 Defendant, Northern Pacific Railway Co., the sum of Two hundred eighty-seven and 16/100 Dollars damages, with thirteen and 25/100 Dollars costs and disbursements, in all amounting to \$300.41.

Signed this 3rd day of November, A. D. 1915.

N. C. ROBINSON, *Clerk,*  
By G. A. JOHNSON,  
*Deputy Clerk.*

Filed Nov. 3, 1915. N. C. Robinson, Clerk, By G. A. Johnson,  
Deputy.

(Title of Court and Cause.)

*Notice of Appeal.*

To the above named Plaintiff, and to Lyndon A. Smith and Henry C. Flannery, his attorneys, and to N. C. Robinson, Clerk of said Court:

You and each of you will please take notice that the defendant, Northern Pacific Railway Company, appeals to the Supreme Court of the State of Minnesota from the judgment in favor of the plaintiff and against the Northern Pacific Railway Company in the sum of three hundred dollars and fourteen cents (\$300.14) rendered and entered on the 3rd day of November, 1915, and from the whole thereof.

CHARLES W. BUNN AND  
CHARLES DONNELLY,  
*Attorneys for Northern Pacific Railway Company.*

"Endorsed: Filed Nov. 17, 1915. N. C. Robinson, —, By G. P. Ritt, Deputy."

26 Due and personal service of the foregoing notice and receipt of a copy thereof are hereby admitted this 10th day of November, 1915, and a bond for costs and the supersedeas bond required by Sections 8002 and 8004 of the General Statutes of Minnesota 1913 are hereby waived.

LYNDON A. SMITH,  
HENRY C. FLANNERY,  
*Attorneys for Plaintiff.*

Due and personal service and receipt of a copy of the foregoing notice are hereby admitted this 16th day of November, 1915.

N. C. ROBINSON,  
*Clerk of said District Court.*

27 STATE OF MINNESOTA,  
*County of Ramsey:*

— — —, Second Judicial District.

I, N. C. Robinson, Clerk, the District Court, Ramsey County, and State of Minnesota, do hereby certify and return to the Honorable the Supreme Court of said State, that I have compared the foregoing paper writing with the original Notice of Appeal in the action therein entitled, now remaining of record in my office, and that the same is a true and correct copy and transcript of said original and the whole thereof.

Witness my hand and seal of said Court, at St. Paul this 17th day of November A. D. 1915.

[Seal District Court, Ramsey County, Minn.]

N. C. ROBINSON, *Clerk,*  
 By G. P. RITT,  
*Deputy Clerk.*

(Endorsed:) Filed Nov. 24, 1915. I. A. Caswell, Clerk.

28 STATE OF MINNESOTA,  
*County of Ramsey, ss:*

District Court, Second Judicial District.

M. J. SOLUM, Plaintiff,  
 vs.  
 NORTHERN PACIFIC RAILWAY COMPANY, Defendant.

It is hereby stipulated by and between the above entitled parties, through their respective attorneys, that the stay indorsed on the order sustaining the demurrer to the answer in the above entitled action, may be vacated.

LYNDON A. SMITH,  
*Attorney General;*  
 HENRY C. FLANNERY,  
*Of Counsel,*  
*Attorneys for Plaintiff.*  
 CHARLES W. BUNN,  
 CHARLES DO-NELLY,  
*Attorneys for Defendant.*

On reading and filing the above stipulation it is hereby ordered that the stay indorsed on the order sustaining the demurrer to the answer in the above action, may be and the same is hereby vacated.

By the Court.

HUGO O. HANFT, *Judge.*

29 State of Minnesota, County of Ramsey. District Court, Second Judicial District. M. J. Solum, Plaintiff, vs. Northern Pacific Railway Co., Defendant. Stipulation and Order. Lyndon A. Smith, Attorney General; Henry C. Flannery, Of Counsel, Attorneys for Plaintiff. Filed Oct. 29, 1915. N. C. Robinson, —, By G. P. Ritt, Deputy.

30 STATE OF MINNESOTA:

Supreme Court, October Term, 1915.

M. J. SOLUM, Respondent,

vs.

NORTHERN PACIFIC RAILWAY COMPANY, Appellant.

*Assignment of Errors.*

1. The Court erred in sustaining the demurrer to the answer.
2. The Court erred in rendering judgment for the plaintiff.

CHARLES W. BUNN.  
CHARLES DONNELLY.

31 STATE OF MINNESOTA:

Supreme Court, April Term, A. D. 1916.

M. J. SOLUM, Respondent,

vs.

NORTHERN PACIFIC RAILWAY COMPANY, Appellant,

*Syllabus.*

1. Where a railway company operates two lines of railroad between the same points and the freight rate over one line is less than over the other, if other conditions are reasonably equal, it is the duty of the company to transport shipments between those points over the line which will give the shipper the benefit of the cheaper rate.
2. To justify carrying such shipments over the other line and thereby compel the shipper to pay the higher rate, the company must show that he selected such line, or that a proper regard for his interests required the shipment to be made over it.
3. The rates prescribed by chapter 232, laws of 1907, were the lawful rates for transporting intrastate shipments from the time that act declared such rates to be in effect, notwithstanding the fact that the enforcement thereof had been enjoined for a time.
4. Defendant having both an intrastate line and an interstate line over either of which it could have transported plaintiff's ship-

ments, and the lawful rate over the intrastate line being less than that over the interstate line, defendant was not relieved from the duty of transporting such shipments over the intrastate line, and thereby giving plaintiff an opportunity to secure the benefit of the intrastate rate, by the fact that the validity of such rate was in litigation and its enforcement enjoined at the time of the shipment and until the judgment of the United States Supreme Court established its validity and annulled such injunction.

5. Where it was entirely feasible and practicable to transport such shipments over the intrastate line, the fact that owing to easier grades it was more economical to transport them over the interstate line did not justify defendant in disregarding plaintiff's right to have them transported over the intrastate line.
- 32 6. Plaintiff's cause of action is based on the common law  
and is not affected by the federal statutes regulating inter-  
state commerce.

Affirmed.

*Opinion.*

The Pittsburgh Coal Company and the Zenith Furnace Company delivered fourteen carloads of coal to defendant at Duluth, Minnesota, to be transported over defendant's railroad from Duluth, Minnesota to Hitterdal, Minnesota, and there to be delivered to plaintiff, the consignee thereof. Defendant owned and operated two lines of railroad running out of Duluth, over either of which it could have transported the coal from Duluth to Hitterdal. One of these lines, 228.1 miles in length, was wholly within the state of Minnesota; and the legal rate for such shipments over that line, as fixed by the state statute (chap. 232, Laws 1907), was \$1.28 per ton. The other line, 234.7 miles in length, ran through the state of Wisconsin for a distance of 11.7 miles, and the legal rate for such shipments over this line, as fixed by tariffs filed with the Interstate Commerce Commission, was \$2.00 per ton. Defendant having received no instructions as to the line over which the coal should be shipped, transported it over the interstate line and exacted and collected from plaintiff \$2.00 per ton for such transportation. Plaintiff brought this action to recover damages in the amount of the excess paid by him over and above the rate fixed by the state statute for transporting such shipments over the intrastate line. Defendant answered asserting that the shipments were made in interstate commerce and were subject to the interstate rate. Plaintiff demurred to the answer, and the demurrer was sustained. Defendant declined to plead further and judgment was rendered for plaintiff. Defendant appealed.

Defendant does not question that plaintiff would be entitled to recover if the shipments in controversy had been transported over the line which is wholly within Minnesota; but contends that he is not entitled to recover for the reason that the shipments were

actually transported over the line which passed through Wisconsin and therefore were subject to the interstate rates established for such shipments.

33 Where more than one mode or route of transportation is available, the duty of the carrier is stated in Hutchinson on Carriers as follows (2 Hutchinson Carriers, § 615):

"Where a contract for the transportation of goods gives the carrier an option between modes of transportation, this option must be exercised with regard for the interests of the shipper. To exercise the option to the disadvantage of the shipper, unless it is done in good faith and under circumstances which seem to require it, will be a breach of the contract; and the burden of proof will be upon the carrier to show that he exercised the option reasonably under the circumstances. Thus if the carrier should adopt a mode of transportation which involved the payment of a higher rate of freight than a lower one, he must show, in order to justify his act, either that he asked for and obtained directions from the shipper or consignee to employ the more expensive mode, or that because of his inability to procure the means of shipment by the cheaper mode, it was reasonably necessary, in view of the exigencies of the particular case, to resort to the other and more expensive mode."

See also Stewart v. Comer, 100 Ga. 754; Alabama G. S. Ry. Co. v. McKenzie, 139 Ga. 410; Fisher v. Railroad Co., 99 Me. 338; Blitz v. Union Steamboat Co., 51 Mich. 558; G. C. & S. F. Ry. Co. v. Irvine, 73 S. W. 540.

Where a railroad company operates two lines of railroad between the same points, and the freight rate over one line is less than such rate over the other line, if other conditions are reasonably equal, it is the duty of the company to transport shipments between those points over the line which will give the shipper the benefit of the cheaper rate. To justify transporting such shipments over the other line and thereby compel the shipper to pay the higher rate, the company must show that such line was chosen by the shipper, or that the circumstances or exigencies were such that a proper regard for the interests of the shipper precluded the use of the cheaper line. In the present case, the intrastate line was slightly shorter and more direct than the interstate line, and there is no claim that it was not equally safe and expeditious. Consequently it is unnecessary to consider, at this time, when a selection of the more expensive line would be justified on the ground that it was safer, or more direct, or more expeditious.

Defendant contends that, at the time the shipments in question were made, the rate was the same over both lines; and that for this reason, it is not chargeable with having selected an ex-

34 pensive route when a cheaper one was available. The basis for this contention is that the United States Circuit Court had enjoined defendant from putting into effect the rates prescribed by the state statute, on the ground that such rates were confiscatory and invalid; that while such injunction was in force defendant charged and collected the same rates over both lines; and that the shipments in controversy were made while such injunction was in force. The

injunction case went to the United States Supreme Court, and that court held that the state statute and the rates prescribed thereby were valid, and dissolved the injunction. That the state had the power to, and did, establish such rates is now beyond question. As the state statute was a valid exercise of the legislative power, it necessarily follows that the rates prescribed therein have been the lawful rates from the time that the statute declared they should go into effect. It also follows that at the time the shipments in controversy were made the lawful rate over the intrastate line was 72 cents per ton less than the lawful rate over the interstate line. The fact that defendant was legally but erroneously restrained, for a time, from putting such rate into effect did not operate to make the rate unlawful or invalid during such period, nor entitle defendant to retain the excess above the lawful rate, which it had collected by virtue of the erroneous injunction. Defendant knew that the state was striving to have the injunction annulled as not justified by the facts, and a proper regard for the interests of plaintiff required it to secure to him the benefit of whatever advantage might accrue from transporting the shipments over the intrastate line.

Defendant also contends that it had the right to select the interstate route for the reason that, generally, it hauled freight shipped out of Duluth over that line, and freight shipped into Duluth over the intrastate line, on account of the difference in grades between the two lines. There is no showing and no claim that it was not entirely feasible and practicable to haul freight shipped out of Duluth over the intrastate line. In fact that line was constructed

first, and all freight, whether in or out bound, was hauled  
35 over it until the construction of the interstate line several years later. Although on account of easier grades it was more economical to haul out-bound shipments over the interstate line, yet so long as it was entirely feasible and practicable to haul such shipments over the intrastate line, defendant was not justified in serving its own interest at the expense of plaintiff.

It is also contended that the case here presented is one of misroutting over which the Interstate Commerce Commission has exclusive jurisdiction. We find no question involving any right given, regulated, or controlled by the federal law. Plaintiff was entitled to have his coal carried over the intrastate route and seeks to recover the damages he sustained by defendant's failure to carry it over that route. His right of action rests upon the common law, not upon the federal statute, and we fail to find any question requiring solution by the Interstate Commerce Commission. See Pennsylvania Ry. Co. v. Puritan Coal Mining Co., 237 U. S. 121, 59 L. Ed. 867.

Judgment affirmed.

TAYLOR, C.

[Endorsed:] No. 5—19684 (Original). State of Minnesota Supreme Court. M. J. Solum, Respondent, vs. Northern Pacific Ry. Co., Appellant. Opinion and Syllabus. Filed May 19, 1916. I. A. Caswell, Clerk. Taylor, C.

37 State of Minnesota Supreme Court, April Term, A. D. 1916.

No. 5.

M. J. SOLUM, Respondent,

vs.

NORTHERN PACIFIC RAILWAY COMPANY, Appellant,

Pursuant to an order of Court duly made and entered in this cause May 29, A. D. 1916

It is here and hereby determined and adjudged that the judgment of the Court below, herein appealed from, to-wit, of the District Court of the Second Judicial District, sitting within and for the County of Ramsey be and the same hereby is in all things affirmed.

And it is further determined and adjudged that the Respondent above named, do have and recover of said Northern Pacific Railway Company, Appellant herein the sum and amount of Fifty-one and 50/100 Dollars, (\$51.50) costs and disbursements in this cause in this Court, and that execution may be issued for the enforcement thereof.

Dated and signed May 28, A. D. 1916.

By the Court:

Attest:

I. A. CASWELL, Clerk.

*Statement for Judgment.*

Statutory Costs, \$25.00. Printer, \$26.50. Clerk, \$. Acknowledgments, \$. Return, \$. Postage and Express \$. Filing Mandate, \$. Total \$51.50.

38 STATE OF MINNESOTA,  
*Supreme Court, ss:*

I, I. A. Caswell, Clerk of said Supreme Court, do hereby certify that the foregoing is a full and true copy of the Entry of Judgment in the cause therein entitled, as appears from the original remaining of record in my office; that I have carefully compared the within copy with said original and that the same is a correct transcript therefrom.

Witness my hand and seal of said Supreme Court at the Capitol, in the City of St. Paul, May 23 A. D. 1916.

[Seal of the Supreme Court, State of Minnesota.]

[SEAL.]

I. A. CASWELL, Clerk.

[Endorsed:] State of Minnesota Supreme Court. Transcript of Judgment. Filed May 23, A. D. 1916. I. A. Caswell, Clerk.

39 [Endorsed:] No. 19684. State of Minnesota Supreme Court. M. J. Solum, Respondent, against Northern Pacific Railway Company, Appellant. Judgment Roll. Filed May 23, 1916. I. A. Caswell, Clerk.

40 STATE OF MINNESOTA,  
*Supreme Court, ss:*

I, I. A. Caswell, clerk of said court, do hereby certify that the foregoing is a true, full and complete transcript of the record and proceedings in the case of M. J. Solum, Respondent, v. Northern Pacific Railway Company, Appellant, and also of the opinion of the court rendered therein together with the assignment of errors, as the same now appear on file in my office.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court at my office, in St. Paul, Minnesota, this 12th day of June 1916.

[Seal of the Supreme Court, State of Minnesota.]

I. A. CASWELL,  
*Clerk Supreme Court of Minnesota.*

41 In the Supreme Court of the State of Minnesota.

M. J. SOLUM, Respondent,

v.

NORTHERN PACIFIC RAILWAY COMPANY, Appellant,

*Assignments of Error.*

Now comes the Northern Pacific Railway Company, the appellant above named, and says that the Supreme Court of the State of Minnesota erred in its decision and judgment in said cause as appears from the record therein, and that the errors committed are as follows:

1. The court erred in holding that the cause of action herein is not affected by the federal statute regulating interstate commerce.

2. The court erred in holding that the state courts of Minnesota had jurisdiction of said cause in advance of a determination by the Interstate Commerce Commission as to whether the practice of the Northern Pacific Railway Company in moving via its interstate route all shipments of the character involved in said cause was reasonable.

Wherefore, The Northern Pacific Railway Company prays that for the errors aforesaid the said judgment be reversed.

Dated this 22nd day of May, 1916.

C. W. BUNN,  
CHARLES DONNELLY,  
*Attorneys for Northern Pacific Railway Company.*

41½ [Endorsed:] 19684. In the Supreme Court of the State of Minnesota. M. J. Solum, Respondent, v. Northern Pacific Railway Company, Appellant. Assignments of Error. Filed May 23, 1916. I. A. Caswell, Clerk.

42 In the Supreme Court of the State of Minnesota.

M. J. SOLUM, Respondent,

v.

NORTHERN PACIFIC RAILWAY COMPANY, Appellant,

*Petition for Writ of Error.*

The Northern Pacific Railway Company, appellant in the above entitled cause, feeling itself aggrieved by the judgment entered herein on the 23rd day of May, 1916, comes now, by Charles W. Bunn and Charles Donnelly, its attorneys, and petitions the said court for an order allowing said appellant to prosecute a writ of error to the Supreme Court of the United States under and according to the laws of the United States in that behalf made and provided; and also that an order be made fixing the amount of security which the Northern Pacific Railway Company shall give and furnish upon said writ of error and that upon the giving of such security all further proceedings in this court be suspended and stayed until the determination of said writ of error by the Supreme Court of the United States, and your petitioner will ever pray.

Dated May 23, 1916.

C. W. BUNN,

CHARLES DONNELLY,

*Attorneys for Northern Pacific Railway Company.*

43 It is ordered by this court that a writ of error be allowed as prayed for in the foregoing petition, provided, however, that the said Northern Pacific Railway Company, plaintiff in error, give bond according to law in the sum of five hundred dollars (\$500.00), which said bond shall operate as a supersedeas bond.

Dated this 23 day of May, 1916.

CALVIN L. BROWN,

*Chief Justice of the Supreme Court*

*of the State of Minnesota.*

43½ [Endorsed:] 19684. In the Supreme Court of the State of Minnesota. M. J. Solum, Respondent, v. Northern Pacific Railway Company, Appellant. Petition for Writ of Error. Filed May 23, 1916. I. A. Caswell, Clerk.

44 In the Supreme Court of the State of Minnesota.

M. J. SOLUM, Respondent,

v.

NORTHERN PACIFIC RAILWAY COMPANY, Appellant,

*Bond.*

Know all men by these presents That we, Northern Pacific Railway Company, a corporation, as principal, and the National Surety Company, a corporation, as surety, are held and firmly bound unto the above named respondent, M. J. Solum, in the sum of Five Hundred Dollars (\$500.00), to be paid to him, and for the payment of which we bind ourselves and our successors and assigns firmly by these presents.

Sealed with our seals and dated the 22nd day of May, A. D. 1916.

The condition of this obligation is such that, whereas, the said Northern Pacific Railway Company, plaintiff in error, seeks to prosecute its writ of error in the Supreme Court of the United States and to reverse the judgment rendered in the above entitled cause by the Supreme Court of the State of Minnesota.

Now, therefore, if the above named plaintiff in error shall prosecute its writ of error to effect and answer all costs and damages which may be adjudged, if it fail to make good its plea, then this obligation shall be void; otherwise to remain in full force and effect.

NORTHERN PACIFIC RAILWAY COMPANY,

By C. W. BUNN AND  
CHARLES DONNELLY,

*Its Attorneys.*

NATIONAL SURETY COMPANY,  
By W. C. McCURDY, *Attorney in Fact.*

[Seal National Surety Company, New York.]

Approved:

CALVIN L. BROWN,  
*Chief Justice Supreme Court of Minnesota.*

45 [Endorsed:] 19684. In the Supreme Court of the State of Minnesota. M. J. Solum, Respondent, v. Northern Pacific Railway Company, Appellant. Bond. Filed May 23, 1916. I. A. Caswell, Clerk.

46 UNITED STATES OF AMERICA, ss:

The President of the United States of America to the Honorable the Justices of the Supreme Court of the State of Minnesota, Greeting:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Supreme Court of the

State of Minnesota, before you, or some of you, being the highest court of law or equity of the said state in which a decision could be had in the said suit between Northern Pacific Railway Company, plaintiff in error, and M. J. Solum, defendant in error, wherein was drawn in question the construction of a statute of the United States and the validity of contracts executed under and pursuant to said statute, and the decision was against the title, right, privilege or exemption specially set up or claimed under such statute; a manifest error hath happened to the great damage of the said Northern Pacific Railway Company as by its complaint appears.

We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be given therein, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington within thirty days from the date hereof that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what is right and according to the laws and customs of the United States should be done.

Witness, the Honorable Edward D. White, Chief Justice of the United States, the 23rd day of May, in the year of our Lord one thousand nine hundred and sixteen.

[U. S. District Court Seal, District of Minnesota, Third Division.]

[SEAL.]

CHARLES L. SPENCER,  
*Clerk of the United States District Court  
for the District of Minnesota,*  
By MARGARET L. MULLANE,  
*Deputy Clerk.*

46½ [Endorsed:] 19684. Filed May 23, 1916. I. A. Caswell,  
Clerk.

47 STATE OF MINNESOTA,  
*Supreme Court, ss:*

I, I. A. Caswell, clerk of the said court, do hereby certify that there was lodged with me as such clerk on May 23, 1916, in the matter of M. J. Solum, Respondent v. Northern Pacific Railway Company, Appellant.

1. The original bond of which a copy is herein set forth;
2. Copies of the writ of error, as herein set forth,—one for each defendant and one to file in my office.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court at my office, in St. Paul, Minnesota, this 12th day of June 1916.

[Seal of the Supreme Court, State of Minnesota.]

I. A. CASWELL,  
*Clerk Supreme Court of Minnesota.*

## 48 UNITED STATES OF AMERICA, vs.:

To M. J. Solum, Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States at Washington, D. C. within thirty days from the date hereof, pursuant to a writ of error filed in the office of the Clerk of the Supreme Court of the State of Minnesota, wherein Northern Pacific Railway Company, a corporation, is plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Calvin L. Brown, Chief Justice of the Supreme Court of the State of Minnesota, this 23d day of May, in the year of our Lord, One Thousand Nine Hundred and Sixteen.

CALVIN L. BROWN,  
*Chief Justice of the Supreme Court  
 of the State of Minnesota.*

Service of the foregoing citation admitted; and receipt of a copy thereof acknowledged this 23rd day of May, 1916.

LYNDON A. SMITH &  
 HENRY C. FLANNERY,  
*Attorneys for M. J. Solum.*

48½ [Endorsed:] 19684. In the Supreme Court of the State of Minnesota. M. J. Solum, Respondent, v. Northern Pacific Railway Company, Appellant. Citation. Filed May 23, 1916. I. A. Caswell, Clerk.

## 49 In the Supreme Court of the State of Minnesota.

M. J. SOLUM, Respondent,  
 v.

NORTHERN PACIFIC RAILWAY COMPANY, Appellant.

To the Clerk of the above named Court:

Will you please prepare transcript of record on writ of error carrying the above entitled cause to the Supreme Court of the United States for review, said transcript to consist of the following:

1. Complete return to your court as made by the Clerk of the District Court of Ramsey County, Minnesota, in which said cause originated.

2. Transcript of all proceedings in the Supreme Court of Minnesota, including the judgment entered therein and the opinion of the court therein.

3. The petition for writ of error, assignments of error, bond, original writ of error, original citation and this preceipe for transcript.

4. Your certificate.

CHARLES W. BUNN AND  
 CHARLES DONNELLY,  
*Attorneys for Northern Pacific Railway Company.*

Due service of the foregoing praecipe and receipt of a copy thereof acknowledged this 24th day of May, 1916.

LYNDON A. SMITH,  
HENRY C. FLANNERY,  
*Attorneys for Respondent.*

49½ [Endorsed:] 19684. Original. Supreme Court, State of Minn. M. J. Solum, Respondent, vs. Nor. Pac. Ry. Co., Appellant. Filed May 24, 1916. I. A. Caswell, Clerk.

50 UNITED STATES OF AMERICA,  
*Supreme Court of Minnesota, ss:*

In obedience to the commands of the within writ, I herewith transmit to the Supreme Court of the United States a duly certified transcript of the complete record and proceedings in the within entitled case, with all things concerning the same.

In witness whereof, I hereunto subscribe my name, and affix the seal of said Supreme Court of Minnesota, at my office, in the city of St. Paul, Minnesota, this 12th day of June 1916.

[Seal of the Supreme Court, State of Minnesota.]

I. A. CASWELL,  
*Clerk Supreme Court of Minnesota.*

51 543/25,373.

Supreme Court of the United States.

NORTHERN PACIFIC RAILWAY COMPANY, Plaintiff in Error,  
v.  
M. J. SOLUM.

*Statement under Section 9 of Rule 10 of Points on Which Plaintiff in Error will Rely and of the Parts of the Record Which it Thinks Necessary for the Consideration Thereof.*

For a reversal of the judgment below the plaintiff in error intends to rely upon the following points:

1. That the state courts of Minnesota had no jurisdiction of said cause in advance of a determination by the Interstate Commerce Commission as to whether the practice of the plaintiff in error in moving via its interstate route all shipments of the character involved in said cause was reasonable.

2. That the statute of Minnesota prescribing rates for the carriage of coal in that state was invalid as involving a discrimination against and an interference with interstate commerce.

For the consideration of those questions, plaintiff in error thinks it necessary to print only the following parts of the record:

- 52      1. The summons, appearing on p. 1 of the return.  
2. The complaint, appearing on pp. 2-7 of the return.  
3. The answer, appearing on pp. 15-18 of the return.  
4. The demurrer, appearing on p. 20 of the return.  
5. The order of the District Court of Ramsey County, Minnesota, appearing on pp. 22-23 of the return.  
6. The judgment of the District Court of Ramsey County, appearing on pp. 24-25 of the return.  
7. Notice of appeal, appearing on pp. 25-26 of the return.  
8. The certificate of the Clerk of the District Court of Ramsey County, appearing on p. 27 of the return.  
9. The stipulation and order, appearing on p. 28 of the return.  
10. The assignment of errors on appeal to the Supreme Court of Minnesota, appearing on p. 30 of the return.  
11. The decision of the Supreme Court of Minnesota, appearing on pp. 31-35 of the return.  
12. The judgment, appearing on p. 37 of the return.  
13. The Clerk's certificate, appearing on p. 38 of the return.  
14. The Clerk's certificate, appearing on p. 40 of the return.  
15. The assignment of errors, appearing on p. 41 of the return.  
16. The petition for writ of error and order allowing writ, appearing on pp. 42-43 of the return.  
17. The Bond, appearing on p. 44 of the return.  
18. The writ of error, appearing on p. 46 of the return.  
19. The Clerk's certificate, appearing on p. 47 of the return.  
20. The citation appearing on p. 48 of the return.  
21. The preceipe for transcript, appearing on p. 49 of the return.  
22. The Clerk's certificate, appearing on p. 50 of the return.

CHARLES W. BUNN AND  
CHARLES DONNELLY,  
*Attorneys for Plaintiff in Error.*

Due service of the foregoing statement and receipt of a copy thereof is hereby acknowledged this 23rd day of June, 1916.

HENRY C. FLANNERY,  
*Attorney for M. J. Solum.*

- 53      [Endorsed:] Original. State of Minnesota. Supreme Court of U. S. N. P. Ry. Co. vs. M. J. Solum. C. W. Bunn and Charles Donnelly, Attorneys for Pl'tff, St. Paul, Minnesota.
- 54      [Endorsed:] File No. 25,373. Supreme Court U. S., October term, 1916. Term No. 543. Northern Pacific Railway Co., Pl'tff in Error, vs. M. J. Solum. Statement of points on which plaintiff in error intends to rely and designation of parts of the record to be printed, and proof of service of same. Filed June 30, 1916.

Endorsed on cover: File No. 25,373. Minnesota Supreme Court. Term No. 543. Northern Pacific Railway Company, plaintiff in error, vs. M. J. Solum. Filed June 30th, 1916. File No. 25,373.